

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2001-006342

10/03/2008

HON. SUSANNA C. PINEDA

CLERK OF THE COURT

J. Stroble

Deputy

IN RE THE MARRIAGE OF
CYNTHIA LEE THIMMESCH

TERI D MCCALL

AND

PETER ALLAN THIMMESCH

PETER ALLAN THIMMESCH
11337 STONEHOUSE PLACE
POTOMAC FALLS VA 20165

FAMILY COURT SERVICES-CCC

MINUTE ENTRY

This matter has come before the court on Petitioner/Mother's Petition to Establish Judgment(s) for Arrearages with respect to Past Due Child Support; Spousal Maintenance; Medical/Legal Fees & Interest. On April 11, 2002, the Court ordered that Respondent/Father pay child support in the amount of \$2,729.00 per month and spousal maintenance in the amount of \$4,500.00 per month. Spousal support was to be paid for a total of sixty (60) months, with an end date of April 15, 2007.

On August 10, 2004, the Honorable Eileen Willett found Father in arrears on these support payments and entered a Judgment against Father in the amount of \$126,769.00.¹ Subsequently, the Honorable Eileen Willett sought an arrearage calculation for the period of July 1, 2002 through May 31, 2006. Based on this calculation, Father was found to have overpaid his child support in the amount of \$21,402.60, while having significantly underpaid his spousal

¹ This Court has taken judicial notice of its entire file in this matter in setting forth the procedural history and making its findings.

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support obligation. Applying his child support over payment to his spousal support arrearage, Father was found to have a spousal support arrearage of \$59,597.40 as of May 31, 2006. Inclusive in this finding were moneys owed for the original 2004 arrears judgment and moneys owed for child support and spousal maintenance from August 1, 2004 to May 31, 2006. Judge Willett entered an order awarding Mother a judgment² against Father for \$59,567.40 plus interest. This judgment covered all monies owed from July 15, 2002 through May 31, 2006. Father was ordered to pay a minimum of \$1,500.00 per month towards this arrearage judgment, beginning July 1, 2006. Child Support and Spousal Support payments remained the same.

In addition to the judgment on arrears, the Court entered a judgment in favor of Mother for unreimbursed medical and dental expenses in the amount of \$2,500.25. Mother admits that Father paid this judgment in full.

On April 7, 2008, Mother filed her instant petition to establish judgments for arrearages with respect to past due child support, spousal maintenance, medical/legal fees and interest. Mother also seeks attorney's fees for having to proceed with this petition. Father responded, indicating at the time of his response that he has paid all but \$6,000.00 of the principal arrearage owing. At the time of hearing, he testified that he had paid all principal amounts owing and that he is continuing to make payments towards any of the remaining interest that has occurred since Judge Willett's 2004/2006 Judgments were entered. With respect to Mother's claim for medical reimbursement, Father testified that he paid those fees by adjusting monies owed to him by Mother for medical expenses he incurred while the child was in his care. Father acknowledged that he did not advise Mother of any of the medical expenses he had incurred, but had made this "adjustment" on his own accord.

An evidentiary hearing on Mother's petition was held on August 13, 2008. During the hearing, Mother presented testimony that her accounting expert had misapplied the interest by compounding it when simple interest was actually ordered. Father testified, and Mother did not contest, that he had actually paid the arrearage principal owed on the child support and spousal maintenance, and that he was now making payments on the interest due on those totals. Due to the fact that the principal balances have been paid on the April 2004 judgment, he testified that he only owes the simple interest that accumulated on the judgments. Father admits that on July 31, 2008, interest on the arrearages continued to exist and that it totaled \$43,839.19. Father further testified that after July 31, 2008, but prior to the hearing date, he had made an additional \$1,950.50 payment towards the interest owed. This Court notes that Father's obligation to make monthly spousal maintenance payments has ended. As a result, he has monies available to him to expedite his payment on any owing interest.

² This judgment replaced the earlier 2004 judgment.

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IT IS HEREBY ORDERED finding that, as of July 31, 2008, Father owed Mother \$43,839.19 in interest only on the previous arrearage judgments.

IT IS HEREBY ORDERED denying Petitioner's request for judgment.

IT IS FURTHER ORDERED that Father shall make payments of \$3,000.00 per month towards any and all accrued interest on the 2004/2006 Judgments until paid in full.

MEDICAL EXPENSES

Since 2006, the parties have each incurred uncovered medical expenses for the minor child that had medical expenses. Mother submitted her expenses to Father for payment. Instead of reimbursing Mother for his portion of the medical expenses, Father claimed to have credited Mother for her portion of medical expenses he had incurred. Father acknowledged that he had failed to provide Mother with any billing statements showing that he had incurred medical expenses.

IT IS HEREBY ORDERED that Father pay Mother his portion of all medical expenses incurred by Mother for which she has provided billing statements no later than **November 3, 2008**.

ATTORNEY'S FEES/WITNESS FEE COSTS

In her pleadings, Mother asked that this Court award her attorney's fees and expert witness expenses. Father opposes this request, pointing to his status as current on the arrearage judgment entered by Judge Willett.

IT IS HEREBY ORDERED denying Mother's requests for attorney's fees and costs.

PETITION FOR CHANGE OF LEGAL CUSTODY

Pending at the time of the evidentiary hearing was Father's Petition for Temporary Orders for Change in Legal Custody and Primary Residential Parent for Minor Child. On August 11, 2008, Petitioner moved to dismiss without prejudice his request.

IT IS HEREBY ORDERED dismissing Father's Petition for Temporary Orders for Change in Legal Custody and Primary Residential Parent for Minor Child without prejudice.

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PETITION TO MODIFY SUPPORT ORDER

In July 2008, Father petitioned the Court for modification of the existing support orders. Although originally scheduled to be heard on August 13, 2008, due to time constraints, it was not heard.

IT IS THEREFORE ORDERED setting an Evidentiary Hearing on Father's Petition to Modify Support Orders to be held on **Monday, January 12, 2009 at 10:00 a.m. (time allotted: 2 hours)** before the **Honorable Susanna Pineda** at:

**Maricopa County Superior Court
Old Courthouse
125 W. Washington St
Courtroom 209
Phoenix, AZ 85003**

Each side will have one hour to present their evidence.

Pursuant to Rule 77(C)(5), Arizona Rules of Family Law Procedure, each party will be allowed one-half of the available time to present all direct, cross, redirect examination and any argument. The parties are expected to complete the trial in the allotted time, and the time will not be extended absent a motion granted by the Court and filed at least thirty (30) days prior to trial setting forth good cause to extend the time and specifically including a list of each and every witness who will testify and an estimate of time and subject matter of the expected testimony for each witness.

JOINT PRETRIAL STATEMENT

IT IS FURTHER ORDERED that the parties shall file and provide this Division with a copy of a **Joint** Pretrial Statement pursuant to Rule 76, Arizona Rules of Family Law Procedure, no later than **January 1, 2009**.

IT IS FURTHER ORDERED that both parties submit the following attachments to the Joint Pretrial Statement:

A current Affidavit of Financial Circumstances in accordance with Local Rule 6.4(b), accompanied by copies of federal income tax returns for the past two years along with W-2 or 1099 forms and copies of the last four pay stubs.

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A current Parent's Worksheet for Child Support Amount pursuant to the Statewide Child Support Guidelines.

If there are disputed custody, access or visitation issues, a specific proposal for custody and visitation.

If there are disputed issues regarding division of property, a current and detailed inventory and appraisal of property and assets of the parties, together with a summary proposal by each party as to how the property and assets should be divided. If possible, the Court prefers a one page statement of all property except personal property items valued at less than \$500.00 each. If division of the marital residence is at issue at trial, the party seeking to be awarded the marital residence shall offer as an exhibit at trial the true and accurate legal description of the property.

A list of debts with balances.

IT IS FURTHER ORDERED that the failure of counsel or any party to appear at the time of trial, or to timely present the Joint Pretrial Statement in proper form, including each and every attachment required, shall, in the absence of good cause shown, result in the imposition of any and all available sanctions pursuant to Rule 76(D), Arizona Rules of Family Law Procedure, including proceeding to hear this matter by default based upon the evidence presented by the appearing party.

EXHIBITS

IT IS FURTHER ORDERED the parties shall confer prior to the trial regarding exhibits to be marked for the hearing. The parties shall hand deliver any exhibits and an exhibit inventory to the clerk of this division, and not place in the division mailbox, for marking no later than **five business days prior to trial, not including holidays or the day of trial. The production of bench copies is not necessary and will not be accepted by court staff.** All exhibits presented shall have been exchanged between the parties. Duplicate exhibits shall not be presented. **Any exhibits not submitted at least five (5) business days prior to the trial may not be accepted and/or marked prior to trial. Absent good cause, failure to submit all exhibits by that date will result in those items being prohibited from being utilized at the trial.**

IT IS FURTHER ORDERED that the parties shall indicate in the Joint Pre-hearing Statement which exhibits they have agreed will be admissible at hearing as well as any specific objections that will be made to any exhibit if offered at hearing which is not agreed to be admitted. Reserving all objections to the time of hearing will not be permitted. At the time of hearing, subject

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to a determination of relevance by the Court, all exhibits that the parties have agreed to and all exhibits for which no specific objection is stated in the Joint Pre-hearing Statement, shall be admitted.

FINDINGS OF FACT

IT IS FURTHER ORDERED that any party filing a request for findings of fact and conclusions of law pursuant to Rule 82, Arizona Rules of Family Law Procedure, **shall submit proposed findings of fact and conclusions of law to this Division no later than 20 days prior to trial.** Any controverting findings of fact and conclusions of law proposed by the adverse party shall then be submitted no later than ten days prior to trial.

SETTLEMENT

Counsel and the parties are reminded of their obligation to give prompt notice of any settlement to the Court in accordance with Rule 70, Arizona Rules of Family Law Procedure.

The Court notes that if either party fails to appear at trial, default judgment may be entered against him or her and/or the matter may proceed at that time to trial or to a default judgment hearing under Rule 44(B)(2).

IT IS ORDERED with regard to discovery and disclosure requirements:

1. Both parties shall complete all disclosure requirements required by Rules 49 and 50, *Arizona Rules of Family Law Procedure*, including an exchange of all relevant information, documents and exhibits on or before **December 12, 2008**.

2. All depositions and discovery contemplated by Rules 49 through 65, *Arizona Rules of Family Law Procedure*, shall be completed and any motions regarding discovery shall be filed no later than **December 12, 2008**.

3. Counsel and both parties shall personally meet, face to face, at least ten (10) days prior to trial to conduct settlement discussions, prepare a Joint Pre-trial Statement, exchange all exhibits, and discuss the resolution and narrowing of all procedural and substantive issues in this case.

4. The parties shall promptly comply with all requests for relevant information in this case. In this regard, the parties shall sign all necessary consents and releases reasonably required to obtain any relevant documents or records from any financial institution, company, business, medical or health care provider or employer possessing any relevant information.

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If a party is forced to incur attorney's fees or other costs to obtain documents or records by subpoena or other legal process after reasonable request of the other party to obtain such information in a more efficient or economical manner, the Court will consider a request for payment or reimbursement of such fees and costs at the time of trial.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/: Honorable Susanna Pineda

JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.